

—UPDATE—
KENTUCKY'S CONDOMINIUM LAW
& ITS PROTECTIONS FOR CONDOMINIUM PURCHASERS AND SELLERS
(Revised August 2012)

On April 11, 2012, amendments to Kentucky's January 1, 2011 Condominium Act (hereafter, the "2011 Condo Act")¹ became effective. These laws, as amended, include provisions to further protect condominium purchasers and sellers. For example, the *Protection of Condominium Purchasers* section of the 2011 Condo Act² includes ethical standards for board members and officers of a condominium association, which were not included in the law as enacted in 2011. Moreover, a board member is required to "discharge his or her duties as an officer or a member of the executive board, including his or her duties as a member of a committee: (a) in good faith; (b) on an informed basis; and (c) in a manner he or she honestly believes to be in the best interests of the corporation."³

Under the amended law, a condominium association is still required to complete a certificate containing information about: restrictions, assessments or other fees, expenses, reserves for capital expenditures, and any lawsuits or unsatisfied judgments against the association. However, there are a few changes to the law regarding the required content for the certificate. Consequently, the Commission-approved *Condominium Seller's Certificate* form (Form M107) has been revised. The revised form, which may be used to satisfy the certificate requirement in the amended 2011 Condo Act, can be accessed from the Commission's website (www.krec.ky.gov) and from the following link: [Condominium Seller's Certificate](#)

Notably, the amended 2011 Condo Act clearly states that the certificate is not required in the case of: (1) a gratuitous disposition of a unit, (2) a disposition pursuant to a court order, (3) a disposition by a government or governmental agency, (4) a disposition by foreclosure or deed in lieu of foreclosure; (5) a disposition to a person in the business of selling real estate who intends to offer those units to purchasers, and where the purchaser has modified or waived the statutory certificate requirements by agreement, or (6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty.⁴ If none of these exemptions apply, then the condominium certificate requirements must be satisfied.

Licensees should become familiar with the statutory requirements concerning the provision of the Condominium Seller's Certificate. For this reason, the Commission has prepared an outline of the certificate requirements in KRS 381.9203, which includes the rights, responsibilities and protections that they provide for purchasers, sellers, and the licensees who represent them. The outline (Form M108) can be accessed from the Commission's website and from the following link: [Condominium Seller's Certificate Requirements Outline](#)

Finally, if a licensee has a seller-client who does not know, or is uncertain about, whether the property to be sold is or is not subject to the requirements of the amended 2011 Condo Act, then the licensee should advise the seller-client to contact a private attorney. A private attorney can review the documents that govern the association (particularly, the declaration or master deed)—and, thereafter, provide the seller with the legal advice that he or she needs. **NOTE: NEITHER A LICENSEE NOR THE COMMISSION CAN PROVIDE THIS SERVICE.** Licensees are not authorized to provide it because they do not possess a license to practice law, and the Commission lacks jurisdiction over such matters.

¹ See KRS 381.9101 to 381.9207.

² The *Protection of Condominium Purchasers* provisions in the Kentucky Condominium Act are: KRS 381.9201, 381.9203, 381.9205 and 381.9207.

³ See KRS 381.9170.

⁴ See KRS 381.9201(2).

Specifically, Kentucky's updated condominium law provisions are not included in Kentucky's real estate license laws, KRS Chapter 324. They are found in KRS Chapter 381 and can be accessed from the following website: <http://www.lrc.ky.gov/KRS/381-00/CHAPTER.HTM>

Moreover, as KRS 324.2812 states, the Commission does not have any jurisdiction over "community association managers and the management or business activities of not-for-profit community associations, which include townhouse, condominium, homeowner, or neighborhood associations." Again, if you have questions or concerns in these areas, a private attorney should be contacted.